VIRGINIA:

IN THE CIRCUIT COURT FOR HENRICO COUNTY

ALLEN V. JAFFE, 3211 Fox Chase Drive Midlothian, Virginia 23112 Plaintiff,	)	
v.	)	Civil Action No. CL02-1730
VIRGINIA PHOTOTHERAPY, L.L.C., A Virginia corporation Libbie Medical Center Suite E-21 5700 Old Richmond Avenue Richmond, VA 23226 Defendant.	)	

COMPLAINT

SERVE: Virginia Phototherapy, L.L.C.
c/o Nancy R. Little, Registered Agent
1 James Center
901 East Cary Street
Richmond, Virginia 23219

Plaintiff, Allen V. Jaffe, pro se, moves for judgement against the defendant Virginia Phototherapy, L.L.C., on the grounds and in the amounts set forth below:

1. This is a civil action for torts commited by the defendant, Virginia Phototherapy, L.L.C., upon the plaintiff, Allen V. Jaffe, pro se, and plaintiff asserts a cause of action for negligence, product liability, breach of express warranty, breach of implied warranty, fraud and deceit, negligent entrustment, and misrepresentation.

2. Defendant, Virginia Phototherapy, L.L.C., is a Virginia based limited liability company, with its principal place of business at 5700 Old Richmond Avenue, Suite 21, Richmond, Virginia, VA. 23226, and has its registered agent, Nancy R. Little, at 1 James Center, 901 East Cary Street, Richmond, VA. 23219, and is generally in the business of what is advertised as performing "painless, permanent hair removal" using the "Epilight Medical Device, and does sustancial business in Richmond, Virginia.

3. Plaintiff, is a resident of Richmond, Virginia.

4. At all times mentined in this Complaint, defendant, Virginia Phototherapy, L.L.C., advertised to the public the medical service of "painless, permanent hair removal" using an FDA controlled Class II medical device named "Epilight".

5. At all times mentioned in this Complaint, defendant provided the facilities, support services and staff necessary for its doctors practice "painless, permanent hair removal".

6. At all times mentioned in this Complaint, defendant employed technicians to assist and work under Dr. Landess, or other physicians in the

accomplishment of painless, permanent hair removal on patients.

FIRST CAUSE OF ACTION

NEGLIGENCE

7. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

8. Defendant, acting through its officers, agents, representatives, physicians or other employees, represented, by implication or otherwise, through advertising to the general public, including plaintiff, that the "Epilight Medical Device was safe and FDA approved when used for "permanent painless hair removal".

9. Those representations were reiterated and disseminated on the world wide web and in Virginia, by defendant's officers, agents, representatives, physicians and employees acting within the course and scope of their employment or respective relationship, merchandising and marketing the "Epilight" for permanent painless removal **(See Exhibit #2, Defendant's Advertisement).**

10. Those representations by defendant, acting through its officers, agents, representatives, service providers, physicians and employees, were made with the intent that the general public, including plaintiff, in Virginia and worldwide would rely on them, and were made with knowledge of the falsity of those representations, or with reckless disregard of their truth.

12. In reliance on the truth of those representations, plaintiff during the months of October 2000 through January 2001, underwent "Epilight treatments for permanent hair removal, for the areas of the back, shoulders, arms and hands for the purpose intended, as advertised by defendants. However, defendants representations as to "Epilight's FDA approval and its safety and effectiveness for permanent hair removal, were false and fraudulent **(See Exhibit #3, Letter from the FDA)**, and the "Epilight" for permanent and painless hair removal did in fact only temporarily remove the hair and yet caused plaintiff to sustain painfull injuries which included burning, loss of feeling, numbness, headaches, and chills and fever.

13. Plaintiff, being unaware that the device had not received approval for the use represented and of the dangers, and completely relying on defendant representations, which created both express and implied warranties of use and safety, sustained the injuries while being treated for permanent hair removal in the manner and for the purpose intended by defendant. The dangers inherent in the use of the device were a proximate cause of plaintiff's injuries, and, exept for defendant's false and fraudulent representations as to its FDA approved use and safety, plaintiff would not have allowed the use of the device and sustained those injuries.

SECOND CAUSE OF ACTION

PRODUCT LIABILITY

14. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

15. Defendants negligently advertised, marketed, and treated patients using the "Epilight Hair Removal Medical Device" for the purpose of permanent hair removal.

16. The "Epilight Hair Removal System Medical Device", was used on the plaintiff for permanent painless hair removal through the ordinary course of their business in an unreasonably dangerous and defective condition.

17. Plaintiff expected the "Epilight Hair Removal Medical Device" when used for permanent hair removal to be performed on the plaintiff without substantial change in the intended use when performed on the plaintiff. The "Epilight Hair Removal Medical Device was, in fact, used to perform permanent hair removal on the plaintiff, and was used with substantial change in its intended **(See Exhibit #3, Letter from the FDA).** But for the adulteration of the Epilight by representations, the plaintiff would not have unergone the treatments and would not have suffered injuries.

18. The injuries sustained by plaintiff were caused by the unreasonable dangerous and defective

condition and use of "Epilight Hair Removal Medical Device" for permanent hair removal.

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

19. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

20. Plaintiff Allen V. Jaffe, was at the time unskilled in the research, design, manufacture and intended uses of the "Epilight Hair Removal Medical Device" and relied entirely on the skill, judgement and representations of the defendant when permitting hair removal using the "Epilight Hair Removal Medical Device". The defendant, by and through its agents, physicians and employees, advertised and represented that the "Epilight device was safe and fit for the purposes of permanent hair removal that they intended and for which they treated the plaintiff.

21. Pursuant to 8.2-315 of the Va. Code, unless excluded or modified, an implied warranty that the goods shall be fit for a particular purpose arises where the seller, at the time of the contracting, has reason to know any particular purpose for which the good are required and that the buyer is relying on the seller's skill or judgement to select or furnish suitable goods.

22. In this action, defendant had reason to know the exact purpose for which the plaintiff required his

services, namely "**painless and permanent hair removal**" In addition, the defendant had reason to know the buyer was relying on the seller's skill or judgement to furnish appropriate service; and lastly, that the plaintiff in fact relied upon the defendants' skill or judgement.

23. At the time and place of hair removal, plaintiff relied on defendants' implied warranties..but, in fact, the "Epilight Hair Removal Medical Device" was unsafe and unfit for such purpose; and as a result of the breach, plaintiff was caused injuries.

FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

24. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceeding paragraphs.

25. Defendant advertised, marketed, and sold the "Epilight Hair Removal" which was being used for permanent hair removal. Defendant knew that the "Epilight Hair Removal Device" was being used for permanent hair removal and expressly warranted that the "Epilight Hair Removal Device" was FDA approved, safe and fit for the described use of permanent hair removal. In advertisements defendant affirmed by fact, by promises and by descriptions made that the "Epilight" operated by a doctor (at the of **$800.00 per hour**) **(See Exhibit 1, Consent Form)** would painlessly and permanently remove the plaintiff's unwanted hair in only 4-6 treatment sessions **(See Exhibit 2, Defendant's Advertisement),** which became part of the basis of

the bargain. Those photos and ads which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model. (Va. Code 8.2-313 (1991).

26. Plaintiff, ignorant of the misrepresentations by the defendant, permitted the use of the "Epilight" based on the defendants' express warranties, and in reliance was caused to suffer injuries.

FIFTH CAUSE OF ACTION

FRAUD AND DECEIT

27. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

28. At all times material, defendant falsely and fraudulently misrepresented to the public at large that the "Epilight Hair Removal System" was safe and fit for hair removal as advertised. Defendant did fraudulently and deceitfully engaged in misrepresentations, false advertising and intentional misuse of the "Epilight Medical Device" and concealed the fact they deliberately adulterated ted the "Epilight" thereby leading to many of the painfull injuries suffered by other duped users of the "Epilight" **(See Exhibits 5, 6, 7, and 8, Complaints to the FDA),** and **(See Exhibit #4, Washington Post article of injuries suffered by patients of "Epilight).**

29. The representations made by defendant and each of them were, in fact, false and deceitful and constituted a fraudulent and intentional

concealment of the true facts which are that the "Epilight Hair Removal Medical Device" is not approved for painless permanent hair removal **(See Exhibit #3, Letter from the FDA)**, and is therefore not safe for permanent hair removal on humans.

30. When defendant made representations that they knew were false, they made statements with the intent to defraud, deceive, and conceal the truth from the public in order to increase the number of patients their physicians would treat.

31. Plaintiff, at the time the representations were made, was ignorant of their falsity and believed them to be true. In reliance on the false and fraudulent and deceitfull representations, plaintiff underwent painful "Epoilight" treatments and sustained injuries.

32. The false and fraudulent representations made by defendant were directly and indirectly conveyed to plaintiff and who relied on them, and as a result plaintiff suffered serious injuries.

33. In addition to pecuniary damages as a result of the fraud and deceit of defendants, plaintiff is entitled to actual attorney fees and to punitive and exemplary damages.

SEVENTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

34. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

35. The false and misleading representations made by defendant were negligently made, in that defendant knew or should have known that they were, in fact, false and misleading **(See Exhibit #3, Letter from the FDA).**

36. Defendant has the ability to control the actions of its medical staff and physicians conduct with respect to competence, training, advertising, patient-physician conduct, maintenance and display. Yet failed to properly utilize te those controls to prevent abuses.

37. The defendant's relationship with its medical staff and physicians places defendant in the position to protect against the risk of harm, which arises from abuses and misuses by its representative the physicians to their patients. The relationship of the defendants to its doctors and other staff, makes the defendant responsible for their actions and any injuries they caused upon the public and in particular this plaintiff.

38. The negligently made false and misleading representations made by defendants and their failure to exercise controls over its physicians and

other users of the "Epilight Medical Device caused plaintiff's injuries.

EIGHTH CAUSE OF ACTION

NEGLIGENT ENTRUSTMENT

39. Plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

40. The defendant had a high degree of knowledge or should have had a high degree of knowledge concerning its physician users propensity to use the "Epilight" device in an improper or adulterated fashion **(See Exhibit 4, Washington Post Article) (See Exhibits #5, 6, 7 and 8, Complaints to the FDA)**, and extends the duty to defendant to prevent those abuses by its physician users where defendant knows or has reason to know those users would be or are engaging in adulterated uses, fraud, misrepresentations **(See Exhibit 1, Consent Form)**, and false advertising on a consistent basis.

41. But for defendant's failure to ensure that its physician would use the device in a proper an lawful manner, plaintiff would not have sustained injuries.

NINTH CAUSE OF ACTION

OUTRAGEOUS CONDUCT AND GROSS NEGLIGENCE

42. plaintiff incorporates by reference as if fully set forth all of the allegations contained in the preceding paragraphs.

43. The deceitfull conduct of defendant in placing into the streams of commerce the "Epilight Hair Removal Medical Device" for the adulterated use and purpose of permanent hair removal, for use on the human body, was so outrageous, malicious, reckless, willfull, and in wanton disregard of the rights of the public at large and the plaintiff particular, that it warrants the assessment of punitive and exemplary damages in a sum to be deemed fair and reasonable by the trier of fact.

44. The willful and wanton conduct of defendant in total disregard of the rights of the plaintiff caused plaintiff's injuries.

WHEREFOR, plaintiff requests judgement against defendant as follows:

1. General compensatory and pecuniary damages of $1,000,000.00 (One Million Dollars) or as deemed fair and reasonable by the trier of fact;

2. Punitive damages in the sum of $5,,000,000.00 (Five Million Dollars) or as deemed fair and reasonable by the trier of fact;

3. Costs and disbursement of this action; and

4. Such other and further relief as the court deems just, proper and equitable.

The plaintiff demands that this action be tried to a jury and, to ensure that this pro se plaintiff is granted the wider latitude allowed pre se litigants, and to ensure that this pro se

plaintiff has that fair opportunity to present his case against the experienced and practiced opposing counsel, plaintiff asks the following:

(A) That all pre-trial arguments in support of motions or pleadings and all the respective rulings, be presented in writing.

(B) That pursuant to 16.1-93 of the Code of Virginia, that every action proceeding in a court not of record shall be tried according to the principles of law and equity, and when the same conflict the principles of equity shall prevail. No warrant, motion or other pleading shall be dismissed by reason of a mere defect, irregularity or omission in the proceedings or in the form of the pleadings and enter such orders as may be necessary to correct any such defects, irregularities and omissions, and to bring about a trial of the merits of the controversy and promote substancial justice to all parties. The court may make such provisions as to costs and continuances as may be just.

(C) That pursuant to 8.01-275 of the Coe of Virginia, that no action or suit shall abate for want of form where the Motion for Judgement or Bill of Complaint sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. The court shall not regard any defect or imperfection in the pleading, whether it has been heretofore deemed misleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgement,

according to law and the very right of the cause, cannot be given.

ALLEN V. JAFFE

By: (Signature of Allen V. Jaffe)
Allen V. Jaffe, pro se

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